

and on where the work is done. A determination of whether an employee is exempt therefore requires an examination of that employee's duties and where they are performed. Some employees of the employer may be exempt while others may not.

§ 780.324 Requirements for the exemption to apply.

(a) All the following conditions must be met in order for the exemption to apply to an employee:

- (1) He must be "engaged in agriculture";
- (2) Be "principally engaged";
- (3) On the "range", and
- (4) In the "production of livestock."

(b) Since the raising of livestock is included in the definition of agriculture under section 3(f) of the Act (see §§ 780.119-780.121 of subpart B of this part), the range production of livestock would normally be deemed agriculture work, and, consequently, an employee, during this time he is engaged in such activities, would meet the basic requirement of the exemption that he be "employed in agriculture."

The following sections discuss the meaning and application of the other requirements.

§ 780.325 Principally engaged.

(a) To determine whether an employee is "principally engaged" in the range production of livestock, one must consider the nature of his duties and responsibilities. To qualify for this exemption the primary duty and responsibility of a range employee must be to take care of the animals actively or to stand by in readiness for that purpose. A determination of whether an employee has range production of livestock as his primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the range production duties is a useful guide in determining whether this is the primary duty of the employee. In the ordinary case it will be considered that the primary duty means the major part, or over 50 percent, of the employee's time.

(b) Under this principle, an employee who spends more than 50 percent of his time during the year on the range in the duties designated as range produc-

tion duties would be exempt. This is true even though the employee may perform some activities not directly related to the range production of livestock, such as putting up hay or constructing dams or digging irrigation ditches.

§ 780.326 On the range.

(a) For purposes of this exemption, "range" is defined generally as land that is not cultivated. It is land that produces native forage for animal consumption, and includes land that is revegetated naturally or artificially to provide a forage cover that is managed like range vegetation. "Forage" as used here means "browse" or herbaceous food that is available to livestock or game animals.

(b) The range may be on private or Federal or State land, and need not be open. Typically it is not only noncultivated land, but land that is not suitable for cultivation because it is rocky, thin, semiarid, or otherwise poor. Typically, also, many acres of range land are required to graze one animal unit (five sheep or one cow) for 1 month. By its nature, range production of livestock is most typically conducted over wide expanses of land, such as thousands of acres.

§ 780.327 Production of livestock.

For an employee to be engaged in the production of livestock, he must be actively taking care of the animals or standing by in readiness for that purpose. Thus, such activities as herding, handling, transporting, feeding, watering, caring for, branding, tagging, protecting, or otherwise assisting in the raising of livestock and in such immediately incidental duties as inspecting and repairing fences, wells, and windmills would be considered as the production of livestock. On the other hand, such work as terracing, reseeding, haying, and constructing dams, wells, and irrigation ditches would not be considered as the production of livestock within the meaning of the exemption.

§ 780.328 Meaning of livestock.

The term "livestock" includes cattle, sheep, horses, goats, and other domestic animals ordinarily raised or used on

the farm. This is further discussed in § 780.120. Turkeys or domesticated fowl are considered poultry and not livestock within the meaning of this exemption.

§ 780.329 Exempt work.

(a) The standard that must be used to determine whether the individual employee is exempt is that his primary duty must be the range production of livestock and that this duty necessitates his constant attendance on the range, on a standby basis, for such periods of time so as to make the computation of hours worked extremely difficult. The fact that an employee generally returns to his place of residence at the end of each day would not affect the application of the exemption.

(b) Thus, exempt work must be performed away from the "headquarters." The headquarters is not, however, to be confused with the "headquarters ranch." The term headquarters has reference to the place for the transaction of the business of the ranch (administrative center), as distinguished from buildings or lots used for convenience elsewhere. It is a particular location for the discharge of the management duties. Accordingly, the term "headquarters" would not embrace large acreage, but only the ranchhouse, barns, sheds, pen, bunkhouse, cookhouse, and other buildings in the vicinity. The balance of the "headquarters ranch" would be the "range."

(c) Furthermore, the legislative history indicates that this exemption was not intended to apply to feed lots or to any area where the stock involved would be near headquarters. Its sponsors stated that the exemption would apply only to those employees principally engaged in activities which require constant attendance on a standby basis, away from headquarters, such as herding, where the computation of hours worked would be extremely difficult. Such constant surveillance of livestock that graze and reproduce on range lands is necessary to see that the animals receive adequate care, water, salt, minerals, feed supplements, and protection from insects, parasites, disease, predators, adverse weather, etc.

(d) The man-days of labor of employees principally engaged in the range production of livestock, even though the employees are exempt from the wage and hour requirements of the Act, are included in the employer's man-day count for purposes of application of section 13(a)(6)(A). Thus, if a cattle rancher in a particular calendar quarter uses 200 man-days of such range production labor and 400 man-days of agricultural labor performed by individuals not so engaged, he is required to pay the minimum wage to the latter employees in the following year.

§ 780.330 Sharecroppers and tenant farmers.

(a) The test of coverage for sharecroppers and tenant farmers is the same as that applied under the Act to determine whether any other person is an employee or not. Certain so-called sharecroppers or tenants whose work activities are closely guided by the landowner or his agent are covered. Those individuals called sharecroppers and tenants whose work is closely directed and who have no actual discretion in controlling farm operations are in fact employees by another name. True independent-contractor sharecroppers or tenant farmers who actually control their farm operations are not employees, but if they employ other workers they may be responsible as employers under the Act.

(b) In determining whether such individuals are employees or independent contractors, the criteria laid down by the courts in interpreting the Act's definitions of employment, such as those enunciated by the Supreme Court in *Rutherford Food Corporation v. McComb*, are utilized. This case, as well as others, made it clear that the answer to the question of whether an individual is an employee or an independent contractor under the definitions in this Act lies in the relationship in its entirety, and is not determined by common law concepts. It does not depend upon isolated factors but on the "whole activity." An employee is one who as a matter of economic reality follows the usual path of an employee. Each case must be decided on